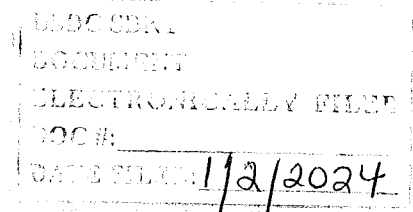


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
JOSE RIVERA COLON,  
Plaintiff,

v.

GUTWEIN; C.O. R. FLANAGAN; C.O. J.  
CROFOOT; and C.O. S. HAZELWOOD,  
Defendants.  
-----X

**ORDER**

22 CV 635 (VB)

1/2/2024  
Copies Mailed/Faxed (CLM)  
Chambers of Vincent L. Briccetti

On September 29, 2023, defendants filed a motion to dismiss the amended complaint in this matter. (Doc. #53). On October 2, 2023, the Court entered a scheduling Order, which provided that plaintiff's opposition to defendant's motion was due on November 30, 2023. (Doc. #56).

As of December 19, 2023, the docket reflected that plaintiff, proceeding pro se and in forma pauperis, had not responded to defendants' motion. Accordingly, the Court sua sponte extended plaintiff's deadline to oppose defendants' motion to January 18, 2024. (Doc. #58). The Court mailed a copy of the December 19, 2023, Order to plaintiff at the address on the docket, which was Upstate Correctional Facility, P.O. Box 2001, Malone, New York 12953.

The Court is now in receipt of the attached letter, dated December 28, 2023, in which personnel from Upstate Correctional Facility report that plaintiff "is temporarily absent from this facility and may not return in the immediate future." The letter also indicates that the facility will hold plaintiff's legal mail at the facility until he returns. A search of the New York State DOCCS Inmate Lookup website indicates plaintiff is currently in custody at Upstate Correctional Facility.

Because the docket reveals that defendants served their motion papers on plaintiff, by mail, several months ago (Doc. #57), the Court sees no reason to further extend plaintiff's deadline to oppose the motion at this stage. Accordingly, should plaintiff fail to oppose defendants' motion by **January 18, 2024**, the Court will deem the motion fully submitted and unopposed, and will decide it in due course. Defendants' reply, if any, remains due by **February 1, 2024**.

Nevertheless, if defendants become aware in the interim that either (i) plaintiff has not received the motion papers defendants sent to him on September 29, 2023, or (ii) that plaintiff has been transferred to another facility or otherwise relocated from Upstate Correctional Facility, they shall promptly so inform the Court by letter.

Plaintiff is reminded that it is his responsibility to advise the Court, in writing of any changes to his address.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal taken from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket, which remains Upstate Correctional Facility.

Dated: January 2, 2024  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

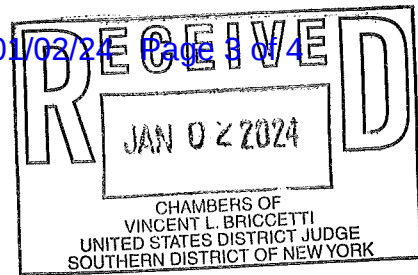
Vincent L. Briccetti  
United States District Judge



KATHY HOCHUL  
Governor

## Corrections and Community Supervision

DANIEL F. MARTUSCELLO III  
Acting Commissioner



Date: December 28, 2023

Vincent L. Briccetti  
U.S. District Judge  
300 Quarropas Street  
White Plains, NY 10601

22cv635

RE: Legal Mail for Incarcerated Individual

Name : Jose Rivera Colon

DIN: 18A3071

Dear Sir/Madam:

Legal mail for the above-named offender was recently received from your office. Please be advised that this offender is temporarily absent from this facility and may not return in the immediate future.

To avoid the confusion and delay that can accompany repeated attempts to forward this mail, it will be held at this facility until the offender's return. If your correspondence requires a timely response from the offender, you may wish to ascertain the current whereabouts of the offender by contacting the Inmate Records Coordinator of this facility at (518) 483-6997 Ext. 4100. You may then direct a second copy to the offender at the temporary location.

Sincerely,

Donald Uhler, Superintendent

Lisa M. Barse  
Office Assistant 2

Cc: File

**UPSTATE CORRECTIONAL FACILITY**

P.O. BOX 2000  
MALONE, NEW YORK 12953

L. Barse/Correspondence

Upstate

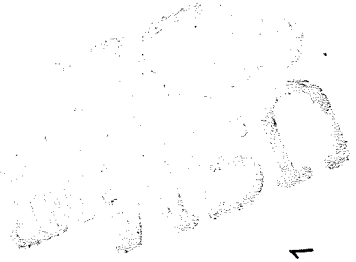


Correctional Facility

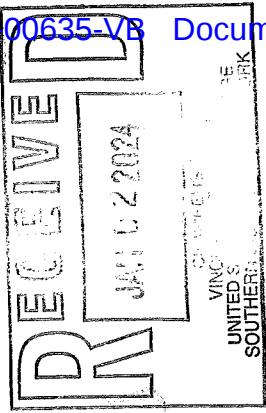
UPSTATE  
CORRECTIONAL  
FACILITY

neopost  
12/28/2023  
FIRST CLASS MAIL  
POSTAGE \$000.63

ZIP 12953  
041L1125114



Vincent L. Briccetti  
U.S. District Judge  
300 Quarropas Street  
White Plains, NY 10601



1060134140 C004

